

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAMIL MCFADDEN,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
JEFFREY BEARD, et al.,	:	NO. 09-5952
Respondents.	:	

EXPLANATION AND ORDER

This Court previously entered an order (Doc. No. 5) directing the Clerk of Quarter Sessions of Philadelphia County to file with the Clerk of this Court the state court record in the matter of Commonwealth v. Kamil McFadden, No. 02-12-0899 2/2 (convicted on November 12, 2003; sentenced on January 9, 2004). On January 22, 2010, we were provided with the Quarter Sessions file. That file, however, does not contain the parties' briefs on direct appeal to the Superior Court.

Respondents appended to their answer pertinent trial court and Pennsylvania Superior Court opinions in this case, as well as copies of a few other relevant items. They also responded to a previous order of this Court to provide certain volumes of the notes of testimony from trial and the parties' briefs on appeal of the dismissal of the PCRA petition.¹ As we complete our preparation of our Report and Recommendation, we have determined that it is necessary to review the materials filed on behalf of McFadden to the Superior Court on direct appeal, *Commonwealth v. McFadden*, 649 EDA 2004 (Pa. Super. Ct.). In light of the fact that these items are not contained among the

¹ Petitioner also provided his reply brief from the PCRA appeal to the Superior Court, as that particular document was not available to Respondents.

records we received from the Clerk of Quarter Sessions, and given that Respondents are in a better position that Petitioner to provide us with a copy of these materials in an expeditious manner, we again turn to Respondents for their assistance in completing this record.

AND NOW, this 17th day of February, 2011, in light of the foregoing and pursuant to Rule 5(c) of the Rules Governing Section 2254 Cases, **IT IS HEREBY ORDERED THAT** the District Attorney of Philadelphia County shall submit to the Court, on or before February 24, 2011, a copy of the following items:

1. Appellant's brief filed with the Pennsylvania Superior Court on direct appeal (believed to have been filed May 25, 2004); and
2. the Commonwealth's brief filed with the Superior Court on direct appeal (believed to have been filed February 22, 2005).

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE